

Ciamporcero, Alan (DC)

From: Candence McCuen [cmccuen@Genuity.com]
Sent: Friday, June 09, 2000 11:11 AM
To: ACiamporcero@dcoffice.gte.com
Cc: sgalebac@Genuity.com; iparker@Genuity.com; bruce.brafman@hq.gte.com;
peter.plaut@telops.gte.com; leonard.suchyta@hq.gte.com
Subject: Revised Software License Agreement

ip software license
agreement ...

Enclosed is the Software License Agreement. We have revised it as follows:

(1) deletion of reference to a Term in the "Whereas" clause; (2) deletion of Term in Section 11.1. The deletion of a Term is necessary to effectuate the separation of GTE and Genuity since there are no longer any renewal rights.

Candence L. McCuen
Counsel
Genuity Inc.
cmccuen@genuity.com

Candence L. McCuen
Counsel
Genuity Inc.
cmccuen@genuity.com
(781) 262-3189 (T)
(781) 262-4481 (F)

SOFTWARE LICENSE AGREEMENT

THIS SOFTWARE LICENSE AND MAINTENANCE AND SUPPORT AGREEMENT ("Agreement") is made between GTE Service Corporation, a New York corporation, with offices for this Agreement at 1255 Corporate Drive, Irving, Texas 75038, and its Affiliates ("GTE on the one hand, each only with respect to its obligations hereunder, and Genuity Solutions Inc., a Delaware corporation, with offices for this Agreement at 3 Van de Graaff Drive, Burlington, Massachusetts 01803 ("GENUITY") on the other hand.

WHEREAS, GENUITY pursuant to this Agreement will be granted a limited, non-exclusive license to use specified GTE-owned software (including any updates provided to GENUITY pursuant to the IT Transition Services Agreement) for the internal operations of GENUITY and its Affiliates.

In consideration of the mutual terms and conditions of this Agreement, the parties agree as follows:

1. General.

GTE and GENUITY desire to establish a contractual mechanism pursuant to which GENUITY and its subsidiary companies will obtain from GTE or an affiliate company of GTE, and GTE or the affiliate will provide to GENUITY and its subsidiary companies, licenses under certain GTE software and maintenance and support services for certain GTE software in accordance with the terms and conditions set forth in this Agreement.

2. Definitions.

For purposes of this Agreement, and in addition to certain terms defined on first use herein and in any schedule attached hereto, the following terms shall have the following meanings:

2.1. "Affiliate" shall mean an entity that controls, is under common control with, or that is controlled by, the entity with which it is affiliated.

2.2. "Confidential Information" shall mean: (i) any information in written, other tangible or electronic form which is labeled by GTE as "confidential", "proprietary" or with a legend of similar import; and (ii) Licensed Software in any form (including, without limitation, related Documentation), whether or not labeled in accordance with the preceding. The terms and conditions of this Agreement shall be deemed to be Confidential Information.

2.3. "Designated Systems" shall mean the computer hardware and operating systems specified in Schedule A, and all computer programs and routines incorporated therein, including, without limitation, Third Party Software.

2.4. "Documentation" shall mean the user guides, operating manuals and related technical materials, whether in print or electronic form, for the Licensed Programs, including, without limitation, for each such guides, manuals and materials, any and all Updates.

2.5. "GTE Products" shall mean Licensed Software, New Products, Confidential Information and any other materials or rights provided hereunder by GTE under this Agreement.

2.6. "Improvements" shall mean all improvements, modifications and enhancements that pertain to the Licensed Software, including without limitation, any and all Updates.

2.7. "Intellectual Property Rights" shall mean any and all worldwide rights existing now or in the future under patent law, copyright law, industrial rights design law, semiconductor chip and mask work protection law, moral rights law, trade secret law, trademark law, unfair competition law, publicity rights law, privacy rights law, and any and all similar proprietary rights, however denominated, and any and all renewals, extensions and restorations thereof, now or hereafter in force and effect.

2.8. "Licensed Programs" shall mean the computer programs, in Object Code only, specified in Schedule A, including, without limitation, for each such programs any and all Updates.

2.9. "Licensed Software" shall mean Licensed Programs and Documentation specified in Schedule A, and any Updates thereof.

2.10. "New Products" shall mean computer programs, in Object Code only, that provide substantially new functions as compared to Licensed Programs, and any related user guides, operating manuals and related technical materials, whether in print or electronic form; provided, however, that "New Products" shall not include Deliverables developed under a Statement of Work to the Software Development and Technical Services Agreement between the parties or their Affiliates of even date herewith

2.11. "Object Code" shall mean the machine-executable version of a computer software program.

2.12. "Third Party Software" shall mean any version of any software product, in Object Code only, and related documentation that is developed or owned by a third party and is distributed or otherwise made available to GENUITY by GTE pursuant to this Agreement or required by GENUITY for the Use of the Licensed Software.

2.13. "Updates" shall mean: (i) corrections of Licensed Software errors, and (ii) any other modifications or additions to the Licensed Software that do not provide substantially new functions to that Licensed Software provided pursuant to a certain IT Transition Services Agreement between the parties of even date herewith (the "IT Transition Services Agreement").. Updates shall not include New Products.

2.14. "Use" means to load, execute, employ, use, store or display the specified subject matter and, in the circumstances described in Section 3.1(c), shall include maintenance.

3. Intellectual Property.

3.1. License Grant.

(a) On the terms and subject to the conditions set forth herein, GTE hereby grants to GENUITY, during the License Term only, a nonexclusive, nontransferable,

worldwide license to Use the Licensed Program and the Documentation only for GENUITY's own internal operations and only on the Designated Systems. The foregoing license grant shall extend to GENUITY's Affiliates; provided, however, that GENUITY shall ensure that each of its Affiliates comply with the terms and conditions of this Agreement and shall be liable for any breach of them by any of its Affiliate.

(b) The foregoing license grant shall include the right of GENUITY to transfer a Licensed Program temporarily to a backup system if a Designated System is inoperative, and to make a reasonable number of copies of the Licensed Programs for testing, disaster recovery, nonproductive backup or archival purposes; provided, however, that all titles, trademarks, copyright, patent and other proprietary rights notices relating to Intellectual Property Rights shall be reproduced in such copies and such copies are stored in a safe and secure place. All such copies, in whole or in part, of any Licensed Program shall be governed by the terms and conditions of this Agreement. The foregoing license grant also shall include the right of GENUITY to make a reasonable number of copies of the Documentation for use with the Licensed Programs; provided, however, that all titles, trademarks, copyright, patent and other proprietary rights notices relating to Intellectual Property Rights shall be reproduced in such copies and such copies are stored in a safe and secure place. All such copies, in whole or in part, of any Documentation shall be governed by the terms and conditions of this Agreement.

(c) GTE and GENUITY shall enter into a Software Escrow Agreement, substantially in the form attached hereto as Exhibit D, for the Licensed Programs identified in Schedule A as requiring the escrow of source code, which shall set forth the terms and conditions pursuant to which source code for the identified Licensed Programs will be made available to GENUITY. In the event that such source code is released to GENUITY pursuant to the Software Escrow Agreement, GTE shall grant to GENUITY a limited, personal, nontransferable and nonexclusive license to use such released source code solely for the purpose of maintaining the License Programs during the License Term. Said license shall not be transferable or sublicensable, and shall not include the right to create any new versions, enhancements or other modifications of the Licensed Programs. The said license shall include the right to have the Licensed Software maintained by a third party, upon GTE's prior written approval, which approval shall not be unreasonably withheld.

(d) The license provided by this Section 3.1 shall not be sublicensable or transferable, in whole or in part, to any third party and is in addition to, and shall not be construed as limiting or expanding in any way, any other licenses that GTE has granted or will grant to GENUITY under GTE Intellectual Property Rights.

3.2. Certain License Limitations.

(a) The license right granted in Section 3.1 shall not include any right to: (i) copy or reproduce, modify, market, sublicense, transfer or distribute the Licensed Software, or any portion thereof, in any manner whatsoever (except as otherwise expressly provided in Section 3.1(b)), (ii) make the Licensed Software, or any portion thereof, available to any other person or entity, whether on a time-sharing basis or otherwise, (iii) Use or otherwise exploit the Licensed Software for the benefit of any other person or entity, or (iv) modify or create works derivative of the Licensed Software or any portion thereof. Except and to the extent expressly set forth in Schedule A, such license grant does not include any license, right, title or interest in or to any Third Party Software or other technology of any third party, or any Intellectual Property Rights therein, required for GENUITY to exercise its rights hereunder. To the extent any Third Party Software is provided by GTE to GENUITY pursuant to this Agreement, the Use of such Third Party

Software shall be pursuant to the terms and conditions of this Agreement, unless a Third Party Software license agreement is included with such Third Party Software, in which instance GTE shall use its best efforts to advise GENUITY of that fact, and such Third Party Software license agreement shall govern the Use of such Third Party Software.

(b) The license right granted in Section 3.1 is for Object Code only and does not include a license or any other rights to the source code or other mnemonic or high-level statement version of the Licensed Programs or any documentation therefor. Without limiting the foregoing, GENUITY shall not decompile, disassemble, reverse analyze or reverse engineer any Licensed Software, or otherwise attempt to discover, generate, use or modify the structural framework or source code of any Licensed Software, or permit or authorize any person or entity to do so.

(c) Nothing herein shall be construed as granting GENUITY, by implication, estoppel or otherwise, any license or other right under any Intellectual Property Right of GTE, including without limitation, any such license or right in or to the Licensed Software, except for the license expressly granted in Section 3.1.

3.3. Ownership.

GENUITY acknowledges and agrees that (i) GTE is and shall remain the sole and exclusive owner of GTE Products, and any and all Intellectual Property Rights therein and (ii) the third party is and shall remain the sole and exclusive owner of Third Party Software, and any and all Intellectual Property Rights therein, and that GENUITY acquires no rights in or to any of the foregoing, other than the license rights expressly granted herein (or in the instance of Third Party Software, the rights granted by the third party). GENUITY agrees neither to do nor to permit any act which may in any way jeopardize or be detrimental to the validity of GTE's Intellectual Property Rights in GTE Products of the third party's Intellectual Property Rights in the Third Party Software.

4. Payments

4.1. Payments. In consideration for the rights and licenses granted herein by GTE for the Use of each Licensed Software and for the Maintenance and Support Services for such Licensed Software provided by GTE hereunder, GENUITY shall pay GTE the annual license fee specified for each Licensed Software set forth in Schedule A hereto; said annual license fee specified in Schedule A shall be applicable only to the first year of the License Term, with the annual license fee thereafter being GTE's then applicable annual license fee (which includes Maintenance and Support Services) charged to third parties who are not Affiliates of GTE (or if there is no annual license fee (which includes Maintenance and Support Services) for third party licensees of the Licensed Software, the amount set forth on the applicable invoice to GENUITY). GTE shall invoice GENUITY for such annual license fee on the Effective Date and on each anniversary thereafter during the License Term, and payment shall be due from GENUITY on or before the thirtieth (30th) day following receipt by GENUITY of such invoice. All payments shall be made in United States currency, shall be nonrefundable and paid fully net, without set-off, deduction or counterclaim unless expressly provided otherwise hereunder, and shall be made by wire transfer to such bank account(s) as GTE may specify in writing.

4.2. Late Payments. GENUITY shall pay interest on any late payments at a rate equal to the lesser of (i) 18% per annum and (ii) the maximum rate of interest allowable under applicable law.

4.3. Taxes. In addition to the charges payable for services and rights and licenses provided hereunder by GTE, GENUITY shall pay GTE an amount equal to any sales, use, privilege, gross revenue, excise or any other tax (except income and franchise taxes), as well as any assessments or duties lawfully levied by a duly constituted governmental authority and for which GTE is required or permitted, by law, to collect from GENUITY with respect to the services, materials and rights provided under this Agreement. In addition, GENUITY shall be responsible for all real and personal property taxes imposed on Licensed Software in GENUITY'S possession on January 1 of every year. If GENUITY determines that any services, materials or rights obtained from GTE are exempt from a tax, GENUITY must provide GTE a properly completed exemption certificate, for all jurisdictions for which GENUITY is claiming an exemption, before GTE will exclude the respective tax from amounts charged to GENUITY. GENUITY shall not deduct any tax amount from remittances to GTE until a properly completed exemption certificate, for all jurisdictions for which GENUITY is claiming an exemption, has been provided to GTE.

5. Delivery.

5.1. Delivery of Licensed Software. Unless otherwise already in the possession of GENUITY, as soon as practicable after the Effective Date of this Agreement, but in any event within thirty (30) days thereafter, GTE shall deliver to GENUITY a number of copies of each item comprising the Documentation and the Licensed Programs; provided, however, the number of copies of Licensed Programs shall in no event not exceed the number of Designated Systems.

5.2. Updates. Any Updates to the Licensed Software shall be provided pursuant to the IT Transition Services Agreement. Any Use or other exploitation in any manner of any Updates shall be subject to all terms and conditions of this Agreement.

5.3. New Products. Any New Products developed or made available by GTE, during the License Term, for Use with or as a replacement for Licensed Software shall be offered to GENUITY at GTE's then-current published license fees, terms and conditions.

5.4. Maintenance and Support Services. Except as otherwise required for GTE to satisfy its obligations contained in Section 8.3 hereof, GTE's sole obligation to provide any maintenance and support services hereunder shall be set forth in the IT Transition Services Agreement.

6. Indemnity for Infringement of Third Party Intellectual Property.

6.1. Indemnity. If Licensed Software becomes the subject of an infringement claim, or in GTE's opinion is likely to become the subject of such a claim, then, in addition to defending the claim and paying any damages and attorneys' fees finally awarded by a court of final jurisdiction, GTE may, at its option and in its sole discretion, and at its own cost and expense: (i) replace or modify such Licensed Software to make it noninfringing or cure any claimed misuse of any third party trade secret; (ii) procure for GENUITY the right to continue Using such Licensed Software pursuant to this Agreement; or (iii) require the return of such Licensed Software and terminate GENUITY's right to Use the same and refund to GENUITY a pro-rata portion of the current annual license fee actually paid to GTE by GENUITY for the Use of such Licensed Software. Notwithstanding the foregoing, if GTE exercises its right to require the return of such Licensed Software and terminates GENUITY's right to Use the same, to the extent permitted by applicable law, GENUITY may retain and continue to Use

such Licensed Software to the extent GENUITY agrees in writing to defend and indemnify GTE for any and all expenses, costs and liabilities associated with such continued possession and Use of such Licensed Software.

6.2. Limitations. GTE shall not be liable to GENUITY for any claims of inducement of infringement or contributory infringement or claims of infringement resulting from the combination of the Licensed Software with the products or services of third parties. Further, GTE shall have no liability to GENUITY hereunder if (i) the claim of infringement is based upon the Use or other exploitation of Licensed Software provided by GTE hereunder in connection or in combination with equipment, devices, data or software not supplied by GTE, and such infringement would not have occurred but for such Use; (ii) such Licensed Software is Used outside of the scope of the rights and licenses granted to GENUITY or in a manner for which the Licensed Software was not designed; (iii) the Licensed Software or any portion thereof is modified by or for GENUITY (even by GTE at GENUITY's direction or instructions), and such infringement would not have occurred but for such modification; or (iv) GENUITY Uses the Licensed Software as part of a patented process and there would be no infringement in the Use of the Licensed Software alone. For all of the foregoing exclusions, GENUITY shall defend and indemnify GTE for any infringement claims to the extent set forth in Section 6.1.

6.3. Procedure. The indemnification obligations set forth in this Section 6 shall not apply unless GENUITY: (i) uses its best efforts to notify GTE promptly in writing of any claims, charges of infringement or litigation in order to allow GTE the opportunity to investigate and defend the matter; provided, however, that the failure to so notify shall only relieve GTE of its obligations under this Section 6 if and to the extent that GTE is prejudiced thereby; and (ii) gives GTE full control of the response thereto and the defense thereof, including, without limitation, any agreement relating to the settlement thereof; provided, however, that GENUITY shall have the right to participate, on a non-interfering basis, in any legal proceeding to contest and defend a claim for infringement and to be represented by legal counsel of its choosing, all at GENUITY's sole cost and expense. However, if GTE fails to promptly assume the defense of the claim, GENUITY may assume the defense at GTE's cost and expense. GTE shall not be responsible for any settlement or compromise made without its prior written consent, unless GENUITY has tendered notice and GTE has then refused to assume and defend the claim and it is later determined that GTE was obligated to assume and defend the claim. GENUITY agrees to cooperate in good faith with the GTE at the request and expense of GTE.

6.4. The foregoing sets forth GTE's sole and exclusive obligations, and GENUITY's sole remedies, for infringement of any Intellectual Property Rights by any GTE Products.

7. Other Obligations of GENUITY and GTE.

7.1. Third Party Software. GENUITY acknowledges that, in order to exercise any rights granted by the license set forth in Section 3.1, including, without limitation, Using the Licensed Software as expressly provided thereby, GENUITY may need to license or otherwise obtain permission to Use Third Party Software. Such licenses or other permissions shall be at GENUITY's sole cost and expense and GENUITY shall be solely responsible for observing and complying with the terms and conditions under which Third Party Software is licensed. GTE shall use its best efforts to inform GENUITY of any Third Party Software that, to GTE's knowledge, is required to Use the Licensed Software.

7.2. Inspection of Facilities. GENUITY shall advise GTE in writing of the location of all facilities at which it is carrying out activities subject to license under this Agreement, including, without limitation, the location of any Designated Systems. GTE may, from time to time, as it deems necessary, at its sole risk and expense, enter such facilities, or any of them, and conduct such inspection as is reasonably necessary to verify the nature of GENUITY's activities and GENUITY's compliance with this Agreement. GENUITY shall provide reasonable assistance to GTE for such inspection, GTE shall minimize the amount of time that it is required to spend in GENUITY's facilities, and GTE shall coordinate all such activities with GENUITY so as not to unreasonably interfere with GENUITY's operations.

7.3. Interoperability. If the provisions of the Council of European Communities Directive of May 14, 1991 on the Legal Protection of Computer Programs (the "Software Directive") apply to GENUITY's Use of the Licensed Programs, and GENUITY wishes to obtain the information necessary to achieve interoperability of an independently created computer program with the Licensed Programs as permitted under Article 6 of the Software Directive ("Interoperability Information"), then GENUITY shall notify GTE in writing, specifying the nature of the Interoperability Information it needs and the purpose for which it will be used. If GTE reasonably determines that GENUITY is entitled to such Interoperability Information under said Article 6, GTE shall, at its option, either (i) provide such Interoperability Information to GENUITY or (ii) authorize GENUITY to reverse engineer the Licensed Programs, within the time limits prescribed by said Article 6, solely to the extent indispensable to obtain such Interoperability Information. If GTE elects clause (i), GENUITY shall provide all information and assistance reasonably requested by GTE to enable GTE to perform clause (i), and GTE may charge GENUITY a reasonable fee, determined in GTE's discretion, for making available the requested Interoperability Information, unless such a fee is prohibited under said Article 6.

8. Warranties.

8.1. Allocation of Risk. An essential purpose of the exclusion of warranties and limitation of liability provided in this Agreement is allocation of risks between GTE and GENUITY, which allocation of risks is reflected in the arrangements between GTE and GENUITY contained in this Agreement.

8.2. No Conflicts. GTE warrants that, to the best of its knowledge, it owns, or otherwise has, the necessary Intellectual Property Rights to grant the licenses, rights and permissions contained herein.

8.3. Conformance Warranty. GTE warrants to GENUITY that (i) with normal service and use, each of the Licensed Programs, including, without limitation, Updates, shall, at the time of first delivery to GENUITY of the Licensed Programs and for a period of thirty (30) days thereafter, conform substantially on the Designated Systems to either the Documentation or the specifications included in Schedule B, as applicable; provided, however, that such Licensed Program has not been modified or altered by GENUITY or any other person or entity, has not been abused or misapplied, has not been Used outside of the scope of the rights and licenses granted pursuant to this Agreement, and has not been Used in combination with hardware or software other than the Designated Systems. The warranty set forth in this Section 8.3 shall be void if GENUITY fails to submit timely a completed report to GTE describing the condition that GENUITY believes constitutes a breach of said warranty, together with removable machine-readable media on which GENUITY has made a copy of that portion of the Licensed Program that GENUITY believes to contain such condition, within twenty (20)

days after GENUITY discovers such condition. GENUITY's sole and exclusive remedy, and GTE's entire liability, for breach of the warranty set forth in this Section 8.3 shall be, at GTE's option and sole expense: to attempt to correct any nonconforming Licensed Programs; to replace any nonconforming Licensed Programs with a corrected copy upon return to GTE of all of GENUITY's copies of such nonconforming Licensed Program; or if GTE is unable to make any Licensed Programs operate as warranted hereunder, to refund any payments on a pro-rata basis actually made by GENUITY to GTE hereunder for such nonconforming Licensed Program during the last year of the License Term.

8.4. Disclaimer. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 8 GTE MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR ARISING BY CUSTOM OR TRADE USAGE, WITH RESPECT TO THE GTE PRODUCTS OR OTHERWISE IN CONNECTION WITH THIS AGREEMENT. WITHOUT LIMITING THE FOREGOING, GTE EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OR REPRESENTATION (i) THAT ANY GTE PRODUCTS OR ANY OF THEIR USE OR ANY ACTIVITIES OF GENUITY CONTEMPLATED BY THIS AGREEMENT, SHALL BE FREE FROM INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY, (ii) AS TO THE QUALITY OR PERFORMANCE OF ANY GTE PRODUCTS OR SERVICES, AND (iii) OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE EVEN IF GTE HAS BEEN ADVISED OR SHOULD HAVE KNOWN OF SUCH PURPOSE. GENUITY SHALL BE SOLELY RESPONSIBLE FOR ADEQUATE PROTECTION AND BACKUP OF GENUITY'S DATA AND SOFTWARE USED IN CONNECTION WITH ITS USE OF GTE

9. Limitation of Liabilities.

9.1. UNDER NO CIRCUMSTANCES SHALL GENUITY BE ENTITLED TO RECOVER FROM GTE ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS OR LOSS OF USE), WHETHER BASED ON CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), OR ANY OTHER CAUSE OF ACTION RELATING TO GTE PRODUCTS, OR OTHERWISE RELATING TO THIS AGREEMENT, EVEN IF GTE HAS BEEN INFORMED OR SHOULD HAVE KNOW OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL THE LIABILITY OF GTE (WHETHER BASED ON CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE) OR ANY OTHER CAUSE OF ACTION) EXCEED THE AGGREGATE AMOUNT OF PAYMENTS ACTUALLY RECEIVED BY GTE DURING THE LAST YEAR OF THE LICENSE TERM PURSUANT TO SECTION 4.1.

9.2. Third Party Claims. Without limiting the foregoing Section 9.1, and except and to the extent expressly provided for in Section 6, GTE shall under no circumstances be liable for any claim or demand by any third party based on or related to GENUITY's Use of the Licensed Software, errors or alleged errors in GENUITY's Use of the Licensed Software or any other GTE Products or Services. GENUITY shall indemnify and hold GTE harmless from and against any loss, cost or damages, including, without limitation, reasonable attorneys' and professionals' fees, arising in connection or as a result of such claim or demand.

10. Confidential Information.

10.1. Restrictions. GENUITY shall: (i) use Confidential Information only in connection with fulfilling its obligations and exercising its rights hereunder; (ii) hold Confidential Information in strict confidence and exercise due care with respect to its handling and protection, consistent with GENUITY's own policies concerning the protection of its own confidential information of similar importance, but in no instance less than reasonable care; (iii) not disclose, divulge or publish Confidential Information or any portion thereof, except to such of its responsible employees who have a bona fide need-to-know to the extent necessary to exercise GENUITY's rights and licenses under this Agreement and are who are bound in writing to maintain the confidentiality of such Confidential Information; (iv) instruct all such employees not to disclose Confidential Information to third parties; (v) not remove any titles, trademarks, copyright, patent and other proprietary rights notices set forth on or contained within the Confidential Information or any portion thereof; or (vi) not copy or otherwise duplicate any Confidential Information, in whole or in part, including, without limitation, derivations, except and to the extent expressly permitted hereunder and necessary to exercise its rights and licenses hereunder.

10.2. Compliance with Governmental, Judicial Requirements. Notwithstanding anything herein to the contrary, if GENUITY receives a request to disclose any Confidential Information (whether pursuant to a valid and effective subpoena, an order issued by a court or other governmental authority of competent jurisdiction or otherwise) on advice of legal counsel that disclosure is required under applicable law, GENUITY agrees that, prior to disclosing any Confidential Information, it shall (i) notify GTE of the existence and terms of such request or advice, (ii) cooperate with GTE in taking legally available steps to resist or narrow any such request or to otherwise eliminate the need for such disclosure at GTE's sole expense, if requested to do so by GTE, and (iii) if disclosure is required, it shall be the obligation of GTE to use its best efforts to obtain a protective order or other reliable assurance that confidential treatment shall be afforded to such portion of the Confidential Information of GTE as is required to be disclosed.

10.3. Marking. Any copy of the Confidential Information authorized by GTE to be made by GENUITY pursuant to this Agreement shall conspicuously display markings or statements of GTE appearing on the originals of such Confidential Information.

10.4. Survival. The obligations set forth in this Section 10 shall survive any termination, cancellation or expiration of this Agreement or of any licenses granted pursuant to this Agreement.

11. Termination.

11.1. Termination/Cancellation. Each party shall have the right to terminate/cancel this Agreement, effective immediately, upon written notice to the other party, if any of the following events occur:

- (a) The other files a voluntary petition in bankruptcy (other than as creditor);
- (b) The other is adjudged bankrupt;
- (c) A court assumes jurisdiction of the assets of the other under a federal reorganization act;

(d) A trustee or receiver is appointed by a court for all or a substantial portion of the assets of the other;

(e) The other becomes insolvent or suspends its business; or

(f) The other makes an assignment of its assets for the benefit of its creditors except as required in the ordinary course of business.

11.2. Material Breach. Either party may terminate or cancel this Agreement or any license for Licensed Software, for a material breach or default of any of the terms, conditions or covenants of this Agreement by the other; provided, however, that such termination or cancellation may be made only following the expiration of a thirty (30) day period during which the other party has failed to cure such breach after having been given written notice thereof.

11.3. Other Termination. GENUITY may terminate or cancel any license for any Licensed Software upon thirty (30) days prior written notice to GTE and the rights and licenses for such terminated or cancelled Licensed Software shall immediately terminate at the end of such thirty (30) day period or such earlier period as specified in the notice. Notwithstanding termination or cancellation of any license for any Licensed Software, no refund or credits shall be due or owing to GENUITY.

11.4. Effect of Termination or Expiration.

(a) Upon any expiration, termination or cancellation of this Agreement, either in its entirety or with respect to any licensed for Licensed Software, all rights and licenses granted to GENUITY hereunder or related to such Licensed Software, respectively, shall terminate.

(b) Within a reasonable time after expiration, termination or cancellation of this Agreement or of any license for any Licensed Software, but in no event later than thirty (30) days thereafter, GENUITY shall immediately cease using the Licensed Software and Confidential Information (or in the instance of termination, cancellation or expiration of specific Licensed Software, then only such Licensed Software and related Confidential Information) and shall return to GTE, or shall destroy in a manner satisfactory to GTE, all forms in whatever medium of such Licensed Software and Confidential Information, including, without limitation, any and all copies thereof. An officer of GENUITY shall certify in writing to GTE that GENUITY has complied with the obligations of this Section 11.4(b).

(c) No expiration, termination or cancellation of this Agreement, in whole or in part, shall relieve GENUITY of any obligation to pay amounts due nor affect any other rights or liabilities of the parties which may have accrued prior to the date of expiration, termination or cancellation. Notwithstanding anything herein to the contrary, upon any expiration or termination of this Agreement, the provisions of Sections 2, 3.2, 3.3, 4, 6, 7.1, 8.4, 9, 10, 11, 12 and 13 shall survive such expiration, termination or cancellation and shall continue in full force and effect.

(d) With respect to Third Party Software in which GTE acquires rights after the Effective Date and includes in Updates to the Licensed Software, which Third Party Software has been approved by GENUITY as provided in the IT Transition Services Agreement, the parties acknowledge and agree that if GTE amortizes costs associated with such Third Party Software, GENUITY shall pay the balance of any unamortized costs in the event of any termination, cancellation or non-renewal of the license for the Licensed

Software prior to full amortization of such costs, and upon such payment GENUITY will be entitled to continue use of such Third Party Software pursuant to the applicable terms and conditions.

12. Dispute Resolution.

12.1. General. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled first, by good faith efforts of the parties to reach mutual agreement, and second, if mutual agreement is not reached to resolve the dispute, by final, binding arbitration as set out in paragraph 6(c) below.

12.2. Initial Resolution. A party that wishes to initiate the dispute resolution process shall send written notice to the other party with a summary of the controversy and a request to initiate these dispute resolution procedures. Each party shall appoint a knowledgeable, responsible representative from the company who has the authority to settle the dispute, to meet and negotiate in good faith to resolve the dispute. The discussions shall be left to the discretion of the representatives, who may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and correspondence among the representatives for purposes of these negotiations shall be treated as Confidential Information developed for purposes of settlement, shall be exempt from discovery and production, and shall not be admissible in the arbitration described above or in any lawsuit pursuant to Rule 408 of the Federal Rules of Evidence. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted and may, if otherwise admissible, be admitted in evidence in the arbitration or lawsuit. The parties agree to pursue resolution under this subsection for a minimum of 60 days before requesting arbitration.

12.3. Arbitration. If the dispute is not resolved under the preceding subsection within 60 days of the initial written notice, either party may demand arbitration by sending written notice to the other party. The parties shall promptly submit the dispute to the American Arbitration Association for resolution by a single neutral arbitrator acceptable to both parties, as selected under the rules of the American Arbitration Association. The dispute shall then be administered according to the American Arbitration Association's Commercial Arbitration Rules, with the following modifications: (i) the arbitration shall be held in a location mutually acceptable to the parties, and if the parties do not agree, the location shall be New York City; (ii) the arbitrator shall be licensed to practice law; (iii) the arbitrator shall conduct the arbitration as if it were a bench trial and shall use, apply and enforce the Federal Rules of Evidence and Federal Rules of Civil Procedure; (iv) except for breaches related to Confidential Information or intellectual property, the arbitrator shall have no power or authority to make any award that provides for consequential, punitive or exemplary damages; (v) the arbitrator shall control the scheduling so that the hearing is completed no later than 60 days after the date of the demand for arbitration; and (vi) the arbitrator's decision shall be given within 5 days thereafter in summary form that states the award, without written decision, which shall follow the plain meaning of this Agreement, the relevant documents, and the intent of the parties. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction over the parties. Each party to the dispute shall bear its own expenses arising out of the arbitration, except that the expenses of the facilities to conduct the arbitration and the fees of the arbitrator shall be shared equally by the parties.

12.4. Injunctive Relief. The foregoing notwithstanding, each party shall have the right to seek injunctive relief in an applicable court of law or equity pending resolution of the dispute in accordance with the foregoing.

13. General.

13.1. Notice. Any written notice either party may give the other concerning the subject matter of this Agreement shall be in writing and given or made by means that obtain a written acknowledgment of receipt. Notices shall be sent to the parties at the following addresses, which may be changed by written notice:

To GTE: _____

To GENUITY: _____

Notice shall be deemed to have been given or made when actually received, as evidenced by written acknowledgment of receipt.

13.2. Compliance. GTE and GENUITY shall each comply with the provisions of all applicable federal, state, and local laws, ordinances, regulations and codes (including, without limitation, procurement of required permits or certificates) in fulfillment of their obligations under this Agreement. GTE Products are subject to U.S. export and foreign transactions control regulations. GENUITY undertakes that it shall neither export, nor cause nor permit to be exported, without GTE's prior written consent and without compliance with applicable law and regulation, GTE Products or Services out of the United States of America, nor shall GTE Products or Services be made available, directly or indirectly, for use in any project associated with the design, development, production, testing, stockpiling or use of: (i) nuclear weapons or facilities to produce nuclear explosives, (ii) missiles, or (iii) chemical or biological warfare agents. GENUITY agrees to comply with all applicable laws and regulations relating to the exportation of technical information, as they currently exist and as they may be amended from time to time.

13.3. Assignment, Subcontracting. Neither this Agreement nor any rights or obligations hereunder shall be assignable by either of the parties hereto; provided, however, that GTE may assign this Agreement to any Affiliate.

13.4. Waiver of Terms and Conditions. Failure to enforce any of the terms or conditions of this Agreement shall not constitute a waiver of any such terms or conditions, or of any other terms or conditions.

13.5. Severability. Where any provision of this Agreement is declared invalid, illegal, void or unenforceable, or any changes or modifications are required by regulatory or judicial action, and any such invalid, illegal, void or unenforceable provision, or such change or modification, substantially affects any material obligation of a party hereto, the remaining provisions of this Agreement shall remain in effect and the parties shall mutually agree upon a course of action with respect to such invalid

provision or such change or modification to the end that the purposes of this Agreement are carried out.

13.6. Governing Law. This Agreement, and the rights and obligations contained in it, shall be governed by and construed in accordance with the laws of the State of New York, without regard to any conflicts of law principles that would require the application of the laws of any other jurisdiction.

13.7. No Unreasonable Delay or Withholding. Where agreement, approval, acceptance, consent or similar action by GENUITY or GTE is required, such action shall not be unreasonably delayed or withheld.

13.8. Force Majeure. If performance of any obligations by either party under this Agreement (other than any obligation of either party to pay money hereunder) is prevented, restricted or interfered with by reason of acts of God, wars, revolution, civil commotion, acts of public enemy, embargo, acts of government in its sovereign capacity, labor difficulties, including, without limitation, strikes, slowdowns, picketing or boycotts, communication line failures, power failures, or any other circumstances beyond the reasonable control and not involving any fault or negligence of the party affected, the party affected, upon giving prompt notice to the other party, shall be excused from such performance on a day-to-day basis during the continuance of such prevention, restriction or interference (and the other party shall likewise be excused, on a day-to-day basis during the same period, from performance of its obligations which are dependent upon or affected by such nonperformance); provided, however, that the party so affected shall use its best reasonable efforts to avoid or remove such causes of nonperformance and both parties shall proceed immediately with the performance of their obligations under this Agreement whenever such causes are removed or cease.

13.9. Entire Agreement. This Agreement represents the entire understanding between the parties with the respect to its provisions and cancels and supercedes all prior agreements or understandings, whether written or oral, with respect to the subject matter. This Agreement may only be modified or amended by an instrument in writing signed by duly authorized representatives of the parties. This Agreement shall be deemed to include all Schedules issued hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the ____ day of _____, 2000 (the "Effective Date") through their authorized representatives.

GTE SERVICE CORPORATION

GENUITY SOLUTIONS INC.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

SCHEDULE A

[Schedule: Documentation, Licensed Programs, Designated Systems]

SCHEDULE B

SPECIFICATIONS FOR LICENSED PROGRAMS

[If necessary]

Ciamporcero, Alan (DC)

From: Candence McCuen [cmccuen@Genuity.com]
Sent: Friday, June 09, 2000 11:24 AM
To: ACiamporcero@dcoffice.gte.com
Cc: iparker@Genuity.com; sgalebac@Genuity.com; peter.plaut@telops.gte.com;
bruce.brafman@hq.gte.com; leonard.suchyta@hq.gte.com
Subject: FW: Transition Services Agreement

transition services
agreement....

Enclosed is the Transition Services Agreement. We have revised it as follows: (1) deletion of reference to a Term in the first "Whereas" clause; (2) revision of "Term" language in Section 3; (3) addition of language in Section 3 requiring a smooth transition of services from GTE to Genuity.

AGREEMENT FOR TRANSITION SERVICES

This Agreement for Transition Services is made between GTE Service Corporation, a New York corporation, with offices at 1255 Corporate Drive, Irving, Texas 75038 and its affiliates (individually and collectively "GTE") on one hand, each only with respect to the Services (defined below) it provides, and Genuity Solutions Inc., a Delaware corporation, with offices at 3 Van de Graaff Drive, Burlington, Massachusetts 01803 ("GENUITY"), and its subsidiaries and successors in interest, on the other hand.

Whereas, GENUITY desires to obtain certain administrative services including accounting and cash processing, billing, real estate management, and human resources services on a transitional basis; and

Whereas, GTE desires to provide such services to GENUITY.

Now therefore, in consideration of the mutual terms and conditions of this Agreement, the parties agree as follows:

1. GENERAL.

- (a) **Services.** GENUITY desires to obtain certain administrative transitional services on a non-exclusive basis from GTE or an affiliate company of GTE under the terms and conditions of this agreement and statements of work ("Statements of Work") entered into by the parties (this agreement and all attached Statements of work are collectively referred to as the "Agreement"), and GTE or its affiliate shall provide to GENUITY such administrative transitional services (individually and collectively, "Services"). If there is any conflict or inconsistency between the terms and conditions of a Statement of Work and the terms and conditions of this Agreement (excluding for this purpose the Statements of Work), the terms and conditions of the Statement of Work shall control.
- (b) **Statements of Work – Generally.** Each of the Statements of Work entered into by the parties shall: (i) refer expressly to this Agreement; (ii) designate the date as of which the provisions of the Statement of Work shall be effective and, if applicable, the term or period of time during which GTE shall perform Services, provide resources or otherwise discharge its obligations as specified in the Statement of Work if different from the term set out in this Agreement (excluding for this purpose the Statement of Work); (iii) describe the Services to be performed, Work Product (as defined herein) to be delivered, resources to be provided or obligations to be discharged by GTE pursuant to the Statement of Work; (iv) describe the obligations of GENUITY related to the Statement of Work, including

any facilities, equipment, personnel and tasks or other support to be provided or performed by GENUITY; (v) specify the payments to be made to GTE under the Statement of Work, or, if applicable, the basis on which such payments shall be computed; and (vi) specify any other terms and conditions appropriate to the Services to be performed and the obligations of the parties. In the event of conflict or inconsistency between the terms and conditions of a Statement of Work and the terms and conditions of this Agreement (excluding for this purpose the Statement of Work), the terms and conditions of the Statement of Work shall control.

- (c) **Milestones, Phases and Timing; Changes.** Each of the Statements of Work shall set out, if applicable, milestones and phases of the work. When phases are specified, GTE shall not be obligated to proceed with work on the next phase until GENUITY has provided written authorization to proceed. If GENUITY has not provided GTE with written authorization to proceed on a specific phase, and it is necessary to commence or complete such phase in order to meet any milestones specified in the Statement of Work, GTE shall not have any obligations with respect to such milestones and the Statement of Work shall be deemed to be modified accordingly. The Statement of Work may be modified by mutual written agreement, signed by both parties. No verbal changes to the Statement of Work are permitted.
- (d) **Performance.** All Services shall be performed in accordance with the terms and conditions of this Agreement and the requirements, order of performance and delivery dates specified in each Statement of Work. GTE shall devote such time, efforts and resources to the performance of Services as are necessary to accomplish the tasks specified in any Statement of Work. GTE may call upon the expertise and/or assistance of its affiliates, subcontractors or consultants in the performance of such Services, provided that GTE shall obtain the prior written consent of GENUITY in the event it desires to use outside subcontractors or consultants. If a Statement of Work specifies that some or all of the work will be done by a subcontractors or consultant, no additional approval shall be required.
- (e) **Third Party Software Licenses.** GENUITY acknowledges that GTE and its affiliates may be required to use certain software licensed to GTE by third parties to provide Services pursuant to this Agreement. If any licensor of such third party software requires the payment of any consideration to permit GTE to use the vendor's software in order to perform its obligations under this Agreement, GTE shall provide GENUITY with thirty (30) days prior written notice of such additional consideration. GENUITY shall have the option to (i) procure its own license to such software at its own expense, or (ii) authorize GTE to incur such required

additional consideration on its behalf and at GENUITY'S expense. In the event that GENUITY does not agree to either (i) or (ii) above, GTE shall not be required to provide the Services for which such third party licenses are required. If the third party requires GENUITY to secure rights in such third party software to receive the Services or to use the result of such Services, GENUITY shall be responsible for securing such rights at its own cost and expense.

2. **COMPENSATION AND BILLING.**

- (a) **Invoices.** The charges for the Services shall be set out in the applicable Statement of Work. GTE shall invoice GENUITY for Services in accordance with the payment schedule set forth in the applicable Statement of Work. Each invoice shall reference this Agreement and the applicable Statement of Work. The invoices shall be itemized to show the details as to all billed items. Payments shall be made within thirty (30) days from the date each invoice is received by GENUITY.
- (b) **Sales, Use and Other Taxes.** In addition to the charges for Services, GENUITY shall pay GTE an amount equal to any sales, use, privilege, gross revenue, excise, or any other tax (except income and franchise taxes), as well as any assessments or duties with respect to the Services lawfully levied by a duly constituted governmental authority and for which GTE is required, by law, to collect from GENUITY. In addition each party shall be responsible for all real and personal property taxes imposed on software and equipment owned by the respective parties on January 1 of every year. If GENUITY determines that any Services are exempt from a tax, GENUITY must provide GTE a properly completed exemption certificate, for each jurisdiction for which GENUITY is claiming an exemption, before GTE will exclude the respective tax from amounts charged to GENUITY. GENUITY will not deduct any tax amount from remittances to GTE until a properly completed exemption certificate, for all jurisdictions for which GENUITY is claiming an exemption, has been provided to GTE.
- (c) **Expense Reimbursement.** GENUITY shall reimburse GTE for reasonable expenses for travel, meals and lodging incurred by GTE in the performance of its obligations under this Agreement. Any such charges shall be in compliance with GTE's employee expense policies. There shall be no mark-up of such expense charges. GTE shall maintain documentation of expenses incurred, and shall provide copies of invoices of \$100 or more upon GENUITY's request. GTE shall bill GENUITY monthly for expenses as they accrue. The parties will specify any limitation on the reimbursement of expenses in the applicable Statement of Work. It is acknowledged and agreed that if GTE is reasonably

required to incur expenses beyond such limitation in order to provide the Services, then GTE is excused from performing such Services until said expense limitation is removed or changed as mutually agreed, provided that GTE promptly notifies GENUITY of the need to exceed the limitation.

- (d) **Records**. GTE shall maintain complete and accurate records in a form consistent with generally accepted accounting practices, to substantiate GTE charges. GTE shall retain, and make available upon request, such records for a period of three (3) years from the date of invoice for Services. GENUITY and its authorized agents, subject to obligations of confidentiality as set forth in this Agreement, shall have access to such records upon prior written request during normal business hours during the term of this Agreement and during the respective periods in which GTE is required to maintain such records pursuant to this subsection. Access to the records shall be made at the location where such records are normally maintained.

3. TERM.

This Agreement is effective as of the date of closing of the initial public offering of Genuity shares of stock ("Effective Date") and shall expire the earlier of: (a) one (1) year after the Effective Date or (b) expiration or termination of all of the Statements of Work under this Agreement unless earlier terminated under Section 24(a), (b) or (c) of this Agreement. This Agreement may not be renewed. GTE shall use its best efforts to provide all items, services and personnel necessary to effectuate and ensure a smooth and timely transition for Genuity from dependence on Services under such SOW to standalone ability to perform such Services itself or in conjunction with third parties. Both parties shall make appropriate resources available in connection with such transition, and any such steps taken by GTE shall be accomplished prior to the expiration of the term of this Agreement.

4. ACCEPTANCE.

- (a) **Acceptance.** Each Statement of Work shall specify the criteria that GTE must meet in order for the Work Products described in the Statement of Work to be accepted by GENUITY. It shall also specify a test plan, and such other information as GTE and GENUITY mutually deem appropriate and the period of time that GENUITY shall have to review such Work Product and provide notice of acceptance or rejection to GTE. Failure to accept or reject such Work Product within the specified period of time or the commercial use of such Work Product by or for the benefit of GENUITY shall be deemed to be acceptance.
- (b) **Rejection and Revision.** If GENUITY rejects any Work Product, it shall specify in reasonable detail in writing the reasons for rejection and the requirements for revision. If the notice of rejection is not sufficiently detailed to allow GTE to determine why such Work Product is unacceptable, GTE may request in writing that GENUITY provide sufficient additional information. If GTE and GENUITY have joint responsibility for the Work Product and the Work Product requires revision, GTE shall assist GENUITY in making revisions necessary for the Work Product to meet the acceptance criteria within a period of time that is reasonable under the circumstances. If GTE has sole responsibility for the Work Product, then it shall make the necessary revisions within a period of time that is reasonable under the circumstances.

5. CONFIDENTIAL INFORMATION.

- (a) **Confidentiality.** In the course of requesting and performing Services pursuant to this Agreement, each party may receive or acquire from the other information or data pertaining to specifications, drawings, sketches, models, samples, computer programs, methods, concepts, know-how, techniques, processes, and other technical or business information that the other party desires to protect against unauthorized use or further disclosure. Unless otherwise expressly set forth in a Statement of Work, for purposes of this Agreement, "Confidential Information" shall mean: (i) any information in written, other tangible or electronic form which is labeled by the disclosing party as "confidential", "proprietary" or with a legend of similar import; (ii) software in any form (including related documentation), whether or not labeled in accordance with the preceding; (iii) Services and Work Products provided pursuant to this Agreement, with the ownership of and proprietary interest therein being defined in the applicable Statement of Work; or (iv) information orally disclosed and identified as confidential at the time of such disclosure which is summarized in writing within thirty (30) days of such disclosure. Each party shall remain the exclusive owner of its Confidential Information.

- (b) **Use of Confidential Information.** The Confidential Information of the disclosing party may be used by the receiving party only for the performance or use of Services or Work Products to be provided pursuant to this Agreement and may only be disclosed to those employees, subcontractors or agents of the receiving party who have a need to know in order to perform or use Services or Work Products pursuant to this Agreement. Except and to the extent set forth in Section 5(c), the receiving party may not disclose Confidential Information of the other party to any other person, entity, or the public without the prior written consent of the disclosing party. However, such Confidential Information may be disclosed by the receiving party without the necessity of prior written consent, to the receiving party's subcontractors or consultants who require access to such Confidential Information to perform or use the Services under this Agreement, provided such persons have entered into written agreements which contain obligations of nondisclosure and nonuse no less restrictive than set forth in this Section. It is agreed that such written agreements shall be enforceable by the disclosing party.
- (c) **Exceptions.** The obligations in Section 5(b) shall not apply to that portion of any information received from the disclosing party which is: lawfully in the receiving party's possession, with no restriction on use or disclosure, prior to its acquisition from the disclosing party; received in good faith by the receiving party, with no restrictions on use or disclosure, from a third party not subject to any confidential obligation to the disclosing party; now or later becomes publicly known through no breach of confidential obligation by the receiving party; released by the disclosing party to any other person, firm or entity (including governmental agencies or bureaus) without restriction on use or disclosure; or independently developed by or for the receiving party without any reliance on or use of Confidential Information of the disclosing party.
- (d) **Disclosure and Notification.** If a receiving party receives a request to disclose any Confidential Information of the disclosing party (whether pursuant to a subpoena, an order issued by a court or other governmental authority of competent jurisdiction or otherwise) and, on advice of legal counsel, determines that disclosure is required under applicable law, the receiving party agrees that, prior to disclosing any Confidential Information of the disclosing party, it shall (i) notify the disclosing party of the existence and terms of such request or advice, (ii) cooperate with the disclosing party in taking legally available steps to resist or narrow any such request or to otherwise eliminate the need for such disclosure at the disclosing party's sole expense, if requested to do so by the disclosing party, and (iii) if disclosure is required, it shall be the obligation of the disclosing party to use its commercially reasonable efforts to obtain a protective order or other reliable assurance that confidential treatment

shall be afforded to such portion of the Confidential Information of the disclosing party as is required to be disclosed.

- (e) **Continuing Obligation.** The obligation of non-disclosure and non-use with respect to Confidential Information of the disclosing party shall survive termination of this Agreement and shall continue for a period of 5 years thereafter, provided that the obligations of non-disclosure and non-use shall continue in perpetuity for software included in Confidential Information.

6. OWNERSHIP AND LICENSE OF WORK PRODUCTS.

- (a) **Ownership.** Unless expressly provided otherwise in the applicable Statement of Work, the ownership of any and all right, title and interest in and to work products (including without limitation: computer programs and documentation; photographs; logos; drawings; artistic and graphical works; reports; data; information; and other works of authorship) made by Service Provider, or its suppliers or contractors, during performance of Services for Service Recipient in accordance with the applicable Statement of Work (all such works herein "Work Products"), shall be determined in accordance with the terms and conditions of the Software Development and Technical Services Agreement relating to ownership of intellectual property, with those terms and conditions being applied to any Statement of Work issued hereunder and being incorporated herein in their entirety by this reference.
- (b) **License.** Unless expressly provided otherwise in the applicable Statement of Work:
 - (1) If Service Provider owns any Work Products, any license granted to Service Recipient by Service Provider in or to any such Work Products shall be on the same terms and conditions as the license grant by GTE to GENUITY contained in the Software License Agreement, with such terms and conditions being incorporated herein in their entirety by this reference.
 - (2) If Service Recipient owns any Work Products, and subject to Service Provider's obligations with respect to Service Recipient's Confidential Information, Service Provider shall retain a non-exclusive, perpetual, world-wide, royalty-free license to use any such Work Product for its ordinary and usual business purposes.

7. DISPUTE RESOLUTION.

- (a) **General.** Except as provided in subparagraph 7(d) below, any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall attempt to be settled first, by good faith efforts of the parties to reach mutual agreement, and second, if mutual agreement is not reached to resolve the dispute, by final, binding arbitration as set out in paragraph 6(c) below.
- (b) **Initial Resolution.** A party that wishes to initiate the dispute resolution process shall send written notice to the other party with a summary of the controversy and a request to initiate these dispute resolution procedures. Each party shall appoint a knowledgeable, responsible representative from the company who has the authority to settle the dispute, to meet and negotiate in good faith to resolve the dispute. The discussions shall be left to the discretion of the representatives, who may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and correspondence among the representatives for purposes of these negotiations shall be treated as Confidential Information developed for purposes of settlement, shall be exempt from discovery and production, and shall not be admissible in the arbitration described above or in any lawsuit pursuant to Rule 408 of the Federal Rules of Evidence. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted and may, if otherwise admissible, be admitted in evidence in the arbitration or lawsuit. The parties agree to pursue resolution under this subsection for a minimum of 60 days before requesting arbitration.
- (c) **Arbitration.** If the dispute is not resolved under the preceding subsection within 60 days of the initial written notice, either party may demand arbitration by sending written notice to the other party. The parties shall promptly submit the dispute to the American Arbitration Association for resolution by a single neutral arbitrator acceptable to both parties, as selected under the rules of the American Arbitration Association. The dispute shall then be administered according to the American Arbitration Association's Commercial Arbitration Rules, with the following modifications: (i) the arbitration shall be held in a location mutually acceptable to the parties, and if the parties do not agree, the location shall be New York City; (ii) the arbitrator shall be licensed to practice law; (iii) the arbitrator shall conduct the arbitration as if it were a bench trial and shall use, apply and enforce the Federal Rules of Evidence and Federal Rules of Civil Procedure; (iv) except for breaches related to Confidential Information the arbitrator shall have no power or authority to make any award that provides for consequential, punitive or exemplary damages; (v)

the arbitrator shall control the scheduling so that the hearing is completed no later than 60 days after the date of the demand for arbitration; and (vi) the arbitrator's decision shall be given within 5 days thereafter in summary form that states the award, without written decision, which shall follow the plain meaning of this Agreement, the relevant documents, and the intent of the parties. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction over the parties. Each party to the dispute shall bear its own expenses arising out of the arbitration, except that the expenses of the facilities to conduct the arbitration and the fees of the arbitrator shall be shared equally by the parties.

- (d) **Injunctive Relief.** The foregoing notwithstanding, each party shall have the right to seek injunctive relief in an applicable court of law or equity independent of any resolution of the dispute in accordance with the foregoing.

8. RELATIONSHIP OF PARTIES.

- (a) **Independent Contractors.** In providing any Services pursuant to this Agreement, GTE and its affiliates are independent contractors and not agents or representatives of GENUITY. Persons furnished by the respective parties shall be solely the employees or agents of such parties, respectively, and shall be under the sole and exclusive direction and control of such parties. They shall not be considered employees of the other party or parties for any purpose. Each party shall also be responsible, respectively, for payment of taxes, including federal, state, and municipal taxes, chargeable or assessed with respect to its employees or agents, such as social security, unemployment, worker's compensation, disability insurance and federal and state income tax withholding.
- (b) **No Performance.** Neither party undertakes by this Agreement or any Statement of Work to conduct the business or operations of the other party. Nothing contained in this Agreement or any Statement of Work is intended to give rise to a partnership or joint venture between the parties or to impose upon the parties any of the duties or responsibilities of partners or joint venturers.

9. FORCE MAJEURE.

If performance of any Services under this Agreement is prevented, restricted or interfered with by reason of acts of God, wars, revolution, civil commotion, acts of public enemy, embargo, acts of government in its sovereign capacity, labor difficulties, including without limitation, strikes, slowdowns, picketing or boycotts,

communication line failures, power failures, or any other circumstances beyond the reasonable control and not involving any fault or negligence of the party affected, the party affected, upon giving prompt notice to the other party, shall be excused from such performance on a day-to-day basis during the continuance of such prevention, restriction, or interference (and the other party shall likewise be excused on a day-to-day basis during the same period, from performance of its obligations which are dependent upon or affected by such nonperformance), provided, however, that the party so affected shall use its commercially reasonable efforts to avoid or remove such causes of nonperformance and both parties shall proceed immediately with the performance of their obligations under this Agreement whenever such causes are removed or cease.

If a force majeure condition continues to prevent a party from performing for more than (30) consecutive days, then the other party may terminate the applicable Statement of Work.

10. REGULATORY COMPLIANCE.

- (a) **Cooperation.** This Agreement is subject at all times to any statute, order, rule, or regulation or any state or federal regulatory agency having competent jurisdiction over one or both of the parties hereto or the Services provided hereby. The parties agree to cooperate with each other and with any applicable regulatory agency so that any and all necessary approvals may be obtained. During the term of this Agreement, the parties agree to continue to cooperate with each other in any review of this Agreement by a regulatory agency so that the benefits of this Agreement may be achieved.
- (b) **Filing Agreement.** Notwithstanding the effective date and term of this Agreement as stated elsewhere, to the extent that any statute, order, rule or regulation or any regulatory agency having competent jurisdiction over one or both parties to this Agreement, shall require that this Agreement or subsequent amendment be filed with or approved by such regulatory agency before the Agreement or amendment may be effective, this Agreement or amendment shall not be effective in such jurisdiction until the first business day after such approval or filing shall have occurred.

11. INDEMNIFICATION.

- (a) **General.** GTE and GENUITY, to the fullest extent permitted by law, each shall defend, indemnify and hold harmless the other and its affiliates, officers, agents and employees from any and all amounts payable under any judgment, verdict, court order or settlement (and associated fees and disbursements of counsel) arising from or related to any third-party claims

for injury, sickness, disease or death of any person or damage to any real or tangible personal property or assets to the extent arising from the indemnitor's (either directly or through its officers, agents, subcontractors or representatives) negligence or willful misconduct in the performance of this Agreement provided, however, that if a claim is the result of the joint negligence or joint willful misconduct of GTE and GENUITY, the amount of the claim for which each party is entitled to indemnification shall be limited to that portion of such claim that is attributable to the negligence or willful misconduct of the indemnifying party. The parties agree that the price for Services provided under this Agreement includes consideration for the obligation to indemnify as set out in this Section.

- (b) **Losses.** GENUITY and GTE each shall be responsible for any and all claims, actions, damages, liabilities, costs and expenses, including reasonable attorneys' fees and expenses (collectively, "Losses"), to their respective tangible personal or real property (whether owned or leased), and each party agrees to look only to its own insuring arrangements (if any) with respect to such Losses. Subject to the procedures set forth below, each party shall indemnify, defend, and hold the other party harmless from any and all Losses arising out of, under or in connection with claims for which the indemnitor is responsible under the preceding sentence.
- (c) **Waivers.** GENUITY and GTE waive all rights to recover against each other for any Loss to their respective tangible personal property (whether owned or leased) from any cause covered by insurance maintained by each of them, including their respective deductibles or self-insured retentions. GENUITY and GTE shall cause their respective insurers to issue appropriate waivers of subrogation rights endorsements to all property insurance policies maintained by each Party. Each Party shall give the other written notice if a waiver of subrogation is unobtainable or obtainable only at additional expense. If the Party receiving such notice agrees to reimburse the other Party for such additional expense, the other Party shall obtain such waiver of subrogation. If a waiver is unobtainable or if a Party elects not to pay the additional expense of a waiver, then neither Party nor their insurers shall waive such subrogation rights.
- (d) **Defense.** Except as otherwise set forth in the applicable Statement of Work, and subject to the limitations and procedures set forth below, GTE agrees to defend GENUITY against any action to the extent that such action is based upon a claim that the Service provided by GTE pursuant to this Agreement (i) infringes a United States copyright, (ii) infringes a United States patent or (iii) constitutes an unlawful disclosure, use or misappropriation of another party's trade secret and not as the result of any prohibited use or transfer by GENUITY. GTE shall bear the expense

of such defense and pay any Losses finally awarded by a court of competent jurisdiction that are directly attributable to such claim.

- (e) **Contributory Infringement.** GTE shall not be liable to GENUITY for claims of indirect or contributory infringement. Further, GTE shall have no liability to GENUITY hereunder if (i) the claim of infringement is based upon the use of Services or Work Products provided by GTE hereunder in connection or in combination with equipment, devices, data or software not supplied by GTE, and such infringement would not have occurred but for such use, (ii) such Services or Work Products are used outside of the scope of the rights and licenses granted to GENUITY; (iii) the Services or Work Products are modified by or for GENUITY (including by GTE at GENUITY's direction or instructions), and such infringement would not have occurred but for such modification; (iii) GENUITY uses any of the Services or Work Products in the practice of a patented process and there would be no infringement in the absence of such practice, or (iv) the claim of infringement arises out of the GTE's compliance with written directions provided by GENUITY and such infringement would not have occurred but for such compliance. For all of the foregoing exclusions, GENUITY shall defend and indemnify GTE for any infringement claims to the extent set forth in Section 11(d).
- (f) **Mitigation.** If a Service or Work Product becomes the subject of an infringement claim, or in GTE's opinion is likely to become the subject of such a claim, then, in addition to defending the claim and paying any damages and attorneys' fees as required above, GTE may, at its option and in its sole discretion, and at its own cost and expense: (i) replace or modify such Service or Work Product to make it noninfringing or cure any claimed misuse of any third party trade secret; (ii) procure for GENUITY the right to continue using such Service or Work Product pursuant to this Agreement; or if neither (i) nor (ii) are possible at a commercially reasonable cost, (iii) require the return of such Service or Work Product, terminate the Statement of Work (to the extent it has not yet been completed) and terminate GENUITY's right to use the same and refund to GENUITY a pro-rata portion of the amount actually paid to GTE by GENUITY for such Service or Work Product. Notwithstanding the foregoing, if GTE exercises its right to require the return of such Service or Work Product and terminates GENUITY's right to use the same, to the extent permitted by applicable law, GENUITY may retain and continue to use such Service Work Product to the extent GENUITY agrees in writing to defend and indemnify GTE for any and all expenses, costs and liabilities associated with such continued possession and use of such Service or Work Product. The foregoing sets forth GTE's sole and exclusive obligations, and GENUITY's sole remedies, for infringement of intellectual property by Services or Work Product.

- (g) **Conditions.** The indemnification obligations set forth in this Section shall not apply unless the party claiming indemnification: (i) notifies the other promptly in writing of any matters in respect of which the indemnity may apply and of which the notifying party has knowledge, in order to allow the indemnitor the opportunity to investigate and defend the matter; provided, however, that the failure to so notify shall only relieve the indemnitor of its obligations under this Section if and to the extent that the indemnitor is prejudiced thereby; and (ii) gives the other party full control of the response thereto and the defense thereof, including any agreement relating to the settlement thereof. However, if the indemnitor fails to promptly assume the defense of the claim, the party entitled to indemnification may assume the defense at the indemnitor's cost and expense. The indemnitor shall not be responsible for any settlement or compromise made without its prior written consent, unless the indemnitee has tendered notice and the indemnitor has then refused to assume and defend the claim and it is later determined that the indemnitor was obligated to assume and defend the claim. The indemnitee agrees to cooperate in good faith with the indemnitor at the request and expense of the indemnitor.

12. LIMITATION OF LIABILITY.

- (a) **General.** A party's and its affiliates' liability arising out of or relating to a Statement or Statements of Work and this Agreement, including without limitation on account of performance or nonperformance of obligations hereunder, regardless of the form of the cause of action, whether in contract, tort (including without limitation negligence), statute or otherwise, shall in no event exceed the lesser of (i) the price to be paid to GTE for the completed Statement of Work (whether set out as a fixed price, estimated price, not-to-exceed amount, or other similar expression of the total price for the work to be performed under the Statement of Work); or (ii) the amount actually paid by GENUITY to GTE for the particular Statement of Work from which the claim arises. The limitation in the immediately preceding sentence does not apply to a party's obligations under the Sections entitled Indemnification and Confidential Information, nor does it apply to willful misconduct or gross negligence on the part of a party.
- (b) **Limitation.** EXCEPT FOR BREACHES RELATED TO CONFIDENTIAL INFORMATION, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGE OR LOST PROFITS OF ANY KIND WHATSOEVER EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING.

- (c) **Benefits Under Licenses.** Anything contained herein to the contrary notwithstanding, this Agreement shall not constitute an agreement to start work, to provide Services or Work Product or to make available to GENUITY the benefits under any agreement, license or arrangement if doing so without the consent of and/or payment to another party thereto would constitute a breach thereof or in any material way affect the rights of GTE thereunder, unless and until such consent is obtained and payment, if any, made to such party by GTE, provided however, that GTE will use commercially reasonable efforts to secure such consents and benefits under any such agreement or arrangement. If GTE cannot: (i) obtain such consent; or (ii) GTE and the third party vendor cannot agree on a commercially reasonable payment, if such is required, or (iii) if providing the Services or Work Products or making the benefits under any such agreement, license or arrangement available would materially affect GTE's rights thereunder, GTE shall not be required to provide any Services or Work Products which are dependent upon such agreement, license or arrangement. GENUITY may, however, obtain the requisite license or rights, or pay such fees necessary for GTE to provide the Services.

13. CHANGES IN MANNER OF PROVIDING SERVICES.

GENUITY acknowledges that GTE and its affiliates may in the future determine to outsource certain information technology functions or perform such functions using different computer software operating systems or applications. These changes may prevent GTE from providing certain Services or Work Products to GENUITY pursuant to this Agreement in the manner in which they have been provided prior to such change. In the event GTE determines to take any such action, it will provide GENUITY with one hundred twenty (120) days prior written notice and will cooperate with GENUITY to enable GENUITY to continue to receive any affected Services and Work Products through arrangements with GTE's outsource providers or through conversion of GENUITY data for use on such operating systems or applications. In the event GTE determines to make such changes, GENUITY shall have the right to terminate this Agreement or any affected STATEMENT OF WORK without any liability or penalty. Any customizations requested by GENUITY within or to the systems utilized by GTE to provide the Services shall be at GTE's discretion. GENUITY shall be required to pay the mutually agreed upon cost of such customizations.

14. INSURANCE.

- (a) **Coverage.** GTE agrees to maintain in full force and effect during the term of this Agreement, and so long as the indemnity obligations hereunder are in effect, for GTE the following minimum insurance coverages: (i) Worker's Compensation and Occupational Disease covering GTE's full

liability under the Statutory Workers' Compensation Laws for the state in which the Service is being performed; (ii) Employer's Liability Insurance in the minimum amount of \$100,000 per accident, \$100,000 disease per employee, and \$500,000 disease aggregate; (iii) General Liability Insurance - Broad Form, including, but not limited to GTE's Protective Liability, Blanket Contractual Liability and Products Liability/Completed Operations in the minimum amounts of \$1,000,000 per occurrence; and (iv) If the use of motor vehicles is required, comprehensive Motor Vehicle Liability Insurance to include, but not limited to owned, non-owned, leased, and hired vehicles in the minimum amounts of \$1,000,000 combined single limit per occurrence for Property Damage and any accident resulting in bodily injury or the death of one or more persons, and the consequential damages arising therefrom.

- (b) **Certificates of Insurance.** Certificates of Insurance, incorporating the above-described endorsements, shall be furnished to GENUITY upon request.

15. REPRESENTATIONS AND WARRANTIES.

GTE represents, warrants, and covenants to GENUITY that:

- (a) In performing Services, GTE shall comply with all applicable laws, codes, ordinances, orders, rules and regulations of local, state, and federal governments and agencies and instrumentalities, including, but not limited to, applicable wage and hour, safety and environmental laws, and all standards and regulations of appropriate regulatory commissions and similar agencies.
- (b) All Services furnished by GTE shall be performed by qualified personnel at a level of professional performance standard within the industry in which the Services are provided.
- (c) GTE has all rights and licenses to perform the Services contemplated by this Agreement and any Statement of Work incorporated herein.
- (d) **THE WARRANTIES IN THIS SECTION 15 AND ANY WARRANTY IN A STATEMENT OF WORK, BUT ONLY IF SPECIFICALLY IDENTIFIED AS AN EXPRESS WARRANTY IN SUCH STATEMENT OF WORK (INCLUDING SERVICE LEVEL AGREEMENTS), ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, OR WHETHER ARISING BY COURSE OF DEALING OR PERFORMANCE, CUSTOM, USAGE IN THE TRADE OR PROFESSION OR OTHERWISE, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF**

MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR WARRANTIES AGAINST INFRINGEMENT. Except for the warranties expressly set forth in this Section 15 and any Statement of Work, GENUITY acknowledges and agrees that it has relied on no other representations or warranties and that no other representations or warranties have formed the basis of its bargain hereunder.

- (e) All representations, warranties and covenants of GTE contained in this Section shall continue for the term of this Agreement and shall survive its termination.

16. ASSIGNMENT AND SUBCONTRACTING.

- (a) Neither this Agreement nor any rights or obligations hereunder shall be assignable by either of the parties hereto; provided that GTE may delegate all or any portion of its obligations to perform Services under this Agreement to one or more of its affiliates or either party may assign to any affiliate without the consent of the other party.
- (b) GTE may use subcontractors to perform the Services under this Agreement as specified in Section 1(d). GTE shall be responsible for the fulfillment of its obligations hereunder, notwithstanding the performance of such obligations by its subcontractors.

17. EQUAL EMPLOYMENT.

- (a) **General Compliance.** Without limitation of Section 18, COMPLIANCE WITH LAWS, each party shall comply with applicable laws concerning employment, including, but not limited to the following, which are incorporated herein by specific reference:
 - (1) The Equal Employment Opportunity Clause set forth in Section 202, paragraphs 1 through 7, of Executive Order 11246, as amended, relative to Equal Employment Opportunity and the implementing Rules and Regulations of the Office of Federal Contract Compliance (hereinafter referred to as "the OFCCP") relating to equal employment opportunity.
 - (2) The Affirmative Action Clause set forth in Section 60-741.4 of the Affirmative Action Regulations on Handicapped Workers, issued by the OFCCP pursuant to Section 503 of the Vocational Rehabilitation Act of 1973, as amended.

- (3) The Affirmative Action Clause set forth in Section 60-250.4 of the regulations issued by the OFCCP under Section 402 of the Vietnam Era Veteran's Readjustment Assistance Act of 1974.
 - (4) Public Law 95-507 and Executive Orders 11625 and 12138.
 - (5) The Immigration Reform and Control Act of 1986 and any and all rules and regulations pertaining thereto. In compliance with the Act, GENUITY requires all approved contracting firms to supply only persons authorized to work in the United States pursuant to the Act. GTE shall be responsible for complying with the Act with regard to all employees supplied to GENUITY.
 - (6) Title I of the Americans with Disabilities Act, 42 U.S.C.A. 12101 et seq.
- (b) **ADA.** If any persons furnished by either party under the Agreement or any Statement of Work have a disability as defined in the Americans with Disabilities Act, 42 U.S.C.A. 12101 et seq. (the ADA), the furnishing party shall, where required by Title I of the ADA and at its sole expense, provide "reasonable accommodations" that may be required under Title I of the ADA. If GTE performs Services at facilities operated by GENUITY, GENUITY shall be responsible, at its sole expense, for any physical changes to GENUITY's facility that may be required under the ADA with respect to persons utilized by GTE in performing the Services.
- (c) **Work Environment.** Both parties agree to provide a work environment free from all forms of sexual harassment, including but not limited to, any unwelcome sexual advances, requests or demands for sexual favors, and other visual, verbal, or physical conduct of a sexual nature.

18. COMPLIANCE WITH LAWS.

GTE and GENUITY shall each comply with the provisions of all applicable federal, state, and local laws, ordinances, regulations and codes (including procurement of required permits or certificates) in fulfillment of their obligations under this Agreement. The Confidential Information of each party may be subject to U.S. export and foreign transactions control regulations. Each party undertakes that it will not export, nor cause nor permit to be exported, the other party's Confidential Information out of the United States of America without such other party's prior written consent and without compliance with applicable law and regulation; nor will such Confidential Information be made available, directly or indirectly, for use in any project associated with the design, development, production, testing, stockpiling or use of: (a) nuclear weapons or facilities to produce nuclear explosives; or, (b) missiles; or, (c) chemical or biological warfare

agents. Each party agrees to comply with all applicable laws and regulations relating to the exportation of technical information, as they currently exist and as they may be amended from time to time.

19. PLANT WORK RULES AND RIGHT OF ACCESS.

- (a) **Compliance.** Employees, subcontractors, and agents of the parties, while on the premises of the other, shall comply with all plant rules, regulations and reasonable company standards for security, including (when required by U.S. government regulations) submission of satisfactory clearance from U.S. Department of Defense and other federal authorities concerned.
- (b) **Access.** Each party shall permit reasonable access during normal working hours to its facilities that are used in connection with the performance of Services. No charge shall be made for such visits. Reasonable prior notice shall be given when access is required.
- (c) **Limitation on Access.** If either party is given access, whether on-site or through remote facilities, to any computer or electronic data storage system of the other party in order to accomplish the Services called for in this Agreement, the party that receives such access shall limit such access and use solely to perform Services within the scope of this Agreement and shall not access or attempt to access any computer system, electronic file, software or other electronic services other than those specifically required to accomplish the Services required under this Agreement. Under no circumstances shall either party's personnel access any networks or facilities of the other party for the purpose of accessing other external networks, nor shall any such capabilities for such access be published or made known via any medium, as for example and not by way of limitation, posting on bulletin boards or E-mail. Any such use or publication shall be a material breach of this Agreement. Neither party shall use back doors, data capture routines, games, viruses, worms, or Trojan horses and any intentional introduction of such into the other party's data networks shall be deemed a material breach of this Agreement. The party receiving access shall limit such access to those of its employees whom the other party has authorized in writing to have such access in connection with this Agreement or the applicable Statement of Work, and shall strictly follow all security rules and procedures for use of the providing party's electronic resources. All user identification numbers and passwords and any information obtained as a result of access to and use of a party's computer and electronic data storage systems shall be deemed to be, and shall be treated as, Confidential Information under applicable provisions of this Agreement. Each party agrees to cooperate with the other in the investigation of any apparent unauthorized access to a party's computer or electronic data storage systems.

20. GENUITY RESPONSIBILITIES.

GENUITY agrees to perform in a timely fashion those tasks, and to provide the personnel, facilities and accurate information as agreed by the parties and set forth in the applicable Statement of Work. GENUITY further agrees to cooperate with GTE in its performance of this Agreement, to not unreasonably withhold its consent to any matter for which consent is required or requested.

21. PERMITS.

Unless otherwise specifically provided for in this Agreement, GTE shall obtain and keep in full force and effect, at its expense, any permits, licenses, consents, approvals and authorizations ("Permits") necessary for and incident to the performance and completion of the Services. Notwithstanding the foregoing, GENUITY shall obtain and keep in full force and effect, at its expense, any Permits related to its facilities and the conduct of its business.

22. PUBLICITY.

The parties agree to submit to one another, for prior written approval, all advertising, sales promotion, press releases and other publicity matters relating to the Services performed pursuant to this Agreement, when its respective name or mark is mentioned or language from which the connection of said name or mark may be inferred or implied. The parties further agree not to publish or use such advertising, sales promotions, press releases, or publicity matters without such prior written approval. Any approval required under this Section shall not be unreasonably withheld or delayed by either party.

23. TRADEMARKS, TRADENAMES AND OTHER INTELLECTUAL PROPERTY.

Except as expressly set forth in this Agreement or in a separate written agreement between GTE and GENUITY, nothing in this Agreement or any Statement of Work shall grant, suggest or imply any right, license or authority for one party to use the name, trademarks, service marks, trade names or domain names of the other for any purpose whatsoever. Except and to the extent expressly set forth in this Agreement or in a separate written agreement between GTE and GENUITY, nothing in this Agreement or any Statement of Work shall be deemed to grant to either party any right or license under any intellectual property of the other party.

24. TERMINATION.

- (a) **Termination Events.** Either party may terminate or cancel this Agreement or any Statement of Work, effective immediately, upon written notice to the other party, if any of the following events occur:
- (1) The other files a voluntary petition in bankruptcy (other than as creditor).
 - (2) The other is adjudged bankrupt.
 - (3) A court assumes jurisdiction of the assets of the other under a federal reorganization act.
 - (4) A trustee or receiver is appointed by a court for all or a substantial portion of the assets of the other.
 - (5) The other becomes insolvent or suspends its business.
 - (6) The other makes an assignment of its assets for the benefit of its creditors except as required in the ordinary course of business.
- (b) **Termination for Breach.** Either party may terminate or cancel this Agreement or a Statement of Work, for a material breach or default of any of the terms, conditions or covenants of this Agreement by the other, provided that such termination or cancellation may be made only following the expiration of a thirty (30) day period ("Cure Period") during which the breaching party has failed to cure such breach after having been given written notice thereof. In such event, the non-breaching party may terminate by giving 10 days written notice of termination, after the expiration of the Cure Period.
- (c) **Termination for Convenience.** GENUITY may terminate this Agreement or a Statement of Work during the term of this Agreement or a Statement of Work, for convenience on one hundred twenty (120) days prior written notice to GTE. In the event of termination by GENUITY pursuant to this Section, prior to the end of the term, GENUITY will reimburse GTE for all GENUITY-approved, third party costs for equipment or software which have been incurred by GTE after the execution of this Agreement as a direct result of GTE's provision of Services under this Agreement or any Statement of Work, provided that GENUITY shall be entitled to any right, license or title related to any such equipment or software to the extent GTE has the ability to convey such right, license or title.

- (d) **Termination under Statement of Work.** Statements of Work may be terminated as set out under their specific terms, if different from those set out in (a), (b) and (c) above.

25. NOTICE.

Any written notice either party may give the other concerning the subject matter of this Agreement shall be in writing and given or made by means that obtain a written acknowledgment of receipt. If the notice pertains to a STATEMENT OF WORK performed by any of the following entities notice shall be sent to the applicable company addresses shown below, which may be changed by written notice:

To GTE SERVICE CORPORATION:

1255 Corporate Drive
Irving, Texas 75038
Attention: _____

To GTE DATA SERVICES INCORPORATED:

One East Telecom Parkway
Temple Terrace, Florida 33637
Attention: _____

To GTE CONSOLIDATED SERVICES INCORPORATED:

1255 Corporate Drive
Irving, Texas 75038
Attention: _____

To GTE COMMUNICATION SYSTEMS INCORPORATED:

5616 High Point
Drive, Irving, Texas 75038
Attention: _____

To GENUITY:

3 Van de Graaff Drive
Burlington, Massachusetts 01803
Attention: _____

Notice shall be deemed to have been given or made when actually received, as evidenced by written acknowledgment of receipt.

26. WAIVER OF TERMS AND CONDITIONS.

Failure to enforce any of the terms or conditions of this Agreement shall not constitute a waiver of any such terms or conditions, or of any other terms or conditions.

27. SEVERABILITY.

Where any provision of this Agreement is declared invalid, illegal, void or unenforceable, or any changes or modifications are required by regulatory or judicial action, and any such invalid, illegal, void or unenforecable provision, or such change or modification, substantially affects any material obligation of a party hereto, the remaining provisions of this Agreement shall remain in effect and the parties shall mutually agree upon a course of action with respect to such invalid provision or such change or modification to the end that the purposes of this Agreement are carried out.

28. SURVIVAL OF OBLIGATIONS.

The provisions in the Agreement relating to Confidentiality, Indemnification, Dispute Resolution, Termination, Compensation and Billing, Limitation of Liability, and Insurance shall survive any termination, cancellation or expiration of this Agreement.

29. APPLICABLE LAW.

This Agreement, and the rights and obligations contained in it, shall be governed by and construed in accordance with the laws of the State of New York, without regard to any conflicts of law principles that would require the application of the laws of any other jurisdiction.

30. NO UNREASONABLE DELAY OR WITHHOLDING.

Where agreement, approval, acceptance, consent or similar action by GENUITY or GTE is required, such action shall not be unreasonably delayed or withheld.

31. ENTIRE AGREEMENT

This Agreement represents the entire understanding between the parties with the respect to its provisions and cancels and supercedes all prior agreements or understandings, whether written or oral, with respect to the subject matter. This Agreement may only be modified or amended by an instrument in writing signed by duly authorized representatives of the parties. This Agreement shall be

deemed to include all Exhibits, Addenda and Statements of Work issued hereunder.

32. RULES OF INTERPRETATION

Headings in this Agreement are for convenience of reference only and shall not affect the interpretation or construction hereof. Unless otherwise specified, (i) the terms "hereof", "herein" and similar terms refer to this Agreement as a whole and (ii) references herein to "Sections" refer to parts or sections of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement through their authorized representatives.

Genuity Solutions Inc.

GTE Service Corporation

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____